

VERNON M. AND BARBARA R. JOHNSON

IBLA 79-341

Decided April 11, 1980

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring mining claim OR MC 4126 void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located in calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the mining claim on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned and will be declared void.

APPEARANCES: Barbara R. Johnson, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Vernon M. and Barbara R. Johnson have appealed a decision of the Oregon State Office, Bureau of Land Management (BLM), dated April 4, 1979, declaring mining claim Hotshot No. 3, OR MC 4126, void for failure to file evidence of annual assessment or notice of intention to hold the claim for 1978 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. 1/

1/ The regulations pertaining to location of mining claims, 43 CFR Part 3830, originally published January 27, 1977, at 42 FR 5298, were amended on February 14, 1979, at 44 FR 9720, and on April 5, 1979, at 44 FR 20428. The revisions did not affect the requirements at issue in this appeal.

[1] Appellants located the Hotshot No. 3 claim on September 11, 1977. Section 314(a) of FLPMA requires that "[t]he owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file * * * either a notice of intention to hold the mining claim * * * [or] an affidavit of assessment work performed thereon." [Emphasis added.] The appropriate regulation, 43 CFR 3833.2-1(c), expresses the same requirement. Therefore appellants were required to file the appropriate documents on or before December 30, 1978. They did not do so.

In a letter to BLM dated April 13, 1979, in response to the BLM decision, appellants indicated that Hotshot No. 3 is one of a group of four claims for which assessment work was done jointly. They enclosed a copy of proof of labor for the four claims. The files for the other three claims, Hotshot Nos. 1, 2, and 4, reflect that they were each located in 1972 or 1973. The filing requirements under section 314 of FLPMA, supra, for claims located prior to October 21, 1976, are different from those for claims located after October 21, 1976. For such claims, appellants were required to file on or before the earlier of one of two dates: October 22, 1979, or December 31 of the calendar year following the calendar year in which appellants recorded their notices of location of the claims with BLM. Hotshot Nos. 1, 2, and 4 were recorded with BLM on February 15, 1978, and therefore the appropriate filings were not due until October 22, 1979, for those claims.

As we have stated, filings for Hotshot No. 3, however, were required on or before December 30, 1978. Failure to timely file the appropriate instruments constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4. BLM has properly declared Hotshot No. 3 void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

